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Supreme Court of the United States

OCTOBER TERM, 1965

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation, *Petitioner*,

v.

ALICIA VARAS, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

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June 15, 1965

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No.

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation, *Petitioner*,

v.

ALICIA VARAS, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

Petitioner, The Crown Life Insurance Company, prays that a writ of certiorari issue to review the judgment of the Superior Court of Pennsylvania in the above-entitled case.

OPINIONS BELOW

The opinion of the Court of Common Pleas of Montgomery County, Pennsylvania, is not reported. That opinion appears in the Appendix hereto at page 1a. The opinion of the Superior Court of Pennsyl-

vania, which reversed the judgments of the Court of Common Pleas and which ordered entry of judgment against Petitioner, is reported at 204 Pa. Super. 176 and at 203 A.2d 505 and appears in the Appendix hereto at page 6a. Petition for allowance of an appeal was made to the Supreme Court of Pennsylvania and was dismissed without opinion by that court. The order is not reported but appears in the Appendix hereto at page 16a.

JURISDICTION

The judgments of the Superior Court of Pennsylvania were entered on September 17, 1964. A timely petition for the allowance of an appeal was dismissed by the Supreme Court of Pennsylvania on March 22, 1965.* The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

Whether, in a suit by a Cuban citizen residing outside Pennsylvania against a Canadian corporation with respect to a Cuban insurance policy, the Pennsylvania court by rejecting the defenses of the Canadian corporation under Cuban law and enlarging its obligations through application of Pennsylvania law and by compelling the corporation to make payments prohibited

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* Appeal from the Superior Court of Pennsylvania to the Supreme Court of Pennsylvania is discretionary pursuant to 17 Pa. Stat. Ann. § 190 (1963 Supp.). Consequently this petition for a writ of certiorari seeks to have reviewed the decision of the Superior Court of Pennsylvania but the petition is filed within ninety days of the denial of discretionary review by the Pennsylvania Supreme Court. American Ry. Express Co. v. Levee, 263 U.S. 19, 20-21.

by Cuban law (1) deprived the Canadian corporation of property in violation of the Fourteenth Amendment and (2) involved the United States in a violation of international law.

CONSTITUTIONAL PROVISION INVOLVED

This case involves application of the Fourteenth Amendment in that part which provides:

> ". . . nor shall any state deprive any person of life, liberty, or property without due process of law. . . ."

STATEMENT

Petitioner is a Canadian corporation with its head office in Toronto and is engaged in the business of writing life insurance. Petitioner's operations are international in scope. To that end it maintains branch offices in various nations throughout the world including Cuba and the United States. (R. 212, 254.) The operations of Petitioner's Havana branch are presently subject to stringent regulation by Cuban authorities. (R. 261, 303-10.) While the issuance of new policies has been discontinued, the Havana branch continues to service outstanding Cuban policies with assets maintained in Cuba for that purpose. (R. 252-53.) These assets cannot be transferred by the company to make payments outside Cuba even on its Cuban policies. (R. 261.) Petitioner's Havana branch is subject to severe penalties ("intervention"—in effect, confiscation of its assets) if Petitioner makes payments on its Cuban policies outside of Cuba even with its resources outside of Cuba. (R. 495-98.)

Respondent is a citizen of Cuba, was born in Cuba and was until the latter part of 1960 a resident of Cuba. (R. 217.) On April 27, 1944, application was made to

Petitioner's Havana branch for the policy of life insurance upon which this suit is based. The application provided that "the policy hereby applied for shall not take effect until it has been delivered to me." (Ex. P-AA, R. 205, 502.) The policy was delivered to Respondent in Havana in July 1944 and thereupon became effective. (R. 559.) Both the policy and the application were written in the Spanish language. (R. 183.) All premiums were paid by Respondent in Cuba to Petitioner's Havana branch, the last premium payment made by Respondent having been made in 1960 while Respondent was still a resident of Cuba. (R. 151, 217.)

The policy provided for payment of premiums and benefits in United States dollars which at the time the policy was written and delivered were legal tender in Cuba. (R. 254, 256, 488.) Under Cuban Law No. 13, which became effective in 1951, the dollar ceased to be legal tender and all dollar obligations by operation of this law became peso obligations at one peso to the dollar.* The policy was thereafter treated by both parties as having been transformed into a peso policy and the insured made premium payments in pesos. (R. 267, 272, 286.)** Later, in 1959 and 1961, other

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* Law No. 13 was enacted on December 23, 1948, during the presidency of Carlos Prio Socarras. Its legal tender provisions became effective July 1, 1951, by virtue of Decree No. 1384, enacted April 9, 1951. Decree No. 1384 stated that debtors "may settle" their obligations under contracts issued before July 1, 1951 "at par through the delivery of national currency in the same amounts as those previously expressed in United States dollars." (R. 478, 524-26, 587-89, Appx. 17a-23a.)

** At trial counsel for Respondent suggested that some premium payments after 1951 "might" have been made in dollars and exchanged by the company into pesos at the prevailing rate prior to entering a peso payment on the company's books. The witness replied that such an exchange was "most unlikely" but that "all things are possible." (R. 285-86.) After 1959 payment in dollars was unlawful. (R. 495-96, Appx. 23a discussed *infra*).

Cuban laws were enacted which positively prohibit Petitioner from making any payments under the policy outside Cuba or in any currency other than the Cuban peso.* Thus, in 1951 the parties were given the right, which they acknowledged in practice, to discharge their obligations under the policy in pesos. Since 1959 payment in Cuba and in pesos has been mandatory, and these latter Cuban laws, as already noted, carry severe penalties which are enforceable against Petitioner's assets and its employees in Cuba.

The policy specifically provides for payment of the cash surrender value but only "in the absence of any legal restrictions."** Petitioner has throughout been ready, willing and able to pay Respondent the cash surrender value of her policy in pesos in Cuba in accordance with Cuban law. (R. 168, Appx. 26a.)

In August of 1960 Respondent left Cuba and took up residence in Athens, Georgia. (R. 217-18.) After some preliminary correspondence from Georgia with Petitioner's Toronto office, Respondent in April of 1961 made formal demand through an attorney in Philadelphia on Petitioner's agent in Haverford, Pennsylvania, with a copy to Toronto, for payment of the cash surrender value of her policy in dollars in the United States (R. 165, 201, 211-12.)

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* Cuban Law No. 568 of September 23, 1959, prohibited payments in dollars in Cuba and transfers of Cuban assets, including intangible assets, from Cuba. Cuban Law No. 930, enacted February 23, 1961, required that all obligations demandable in Cuba be liquidated only in Cuban currency in Cuba. (R. 447-51, 493-98, 587-89, Appx. 23a-26a.)

** In the original: "no habiendo ningunas restricciones legales ...." (Ex. P-5, R. 387-88.)

Petitioner's reply from Toronto, dated May 4, 1961, set forth fully in the Appendix hereto (Appx. 26a), reiterated Petitioner's position that the company was prohibited by Cuban law from making the payment sought. (R. 202, 214-16.) On June 21, 1961, Respondent brought this suit through her attorney in the Court of Common Pleas, Montgomery County, Pennsylvania, by serving a complaint upon Petitioner's agent in Haverford, Pennsylvania. (R. 150.)

The complaint was signed by Respondent in Clarke County, Georgia. (R. 158.) Respondent herself had never been in Pennsylvania until the occasion of her testimony at the trial of this suit. Respondent's testimony was that in August of 1961 she had moved from Georgia to Miami, Florida. (R. 218.)

Respondent's complaint sought the cash surrender value of the policy in dollars and in the alternative a "return" in dollars of all premium payments made by Respondent to Petitioner's Havana branch during the period 1944-1960, whether made in dollars or pesos. (R. 151.) After a jury trial the Court of Common Pleas directed a verdict against Respondent on the first claim, holding that the contract was made and was to be performed in Cuba, that it was governed by Cuban law, and that Cuban law prohibited any payment outside Cuba. The court, nevertheless, directed a verdict in favor of Respondent on her claim for return of premiums, applying Pennsylvania law and holding that under Pennsylvania law Respondent was entitled to restitutionary relief. (R. 624; see R. 149, Appx. 1a.) Petitioner strenuously argued that to apply Pennsylvania law to a transaction intimately connected with Cuba and having no relationship with Pennsylvania would violate Petitioner's rights under the Fourteenth

Amendment and would involve the United States in a violation of international law.*

Both parties appealed to the Pennsylvania Superior Court. Petitioner again argued that to apply Pennsylvania law would violate Petitioner's rights under the United States Constitution and involve this country in a violation of international law. (R. 20, 35-39.) The Superior Court reversed the trial court on both counts, holding that while the principal contractual obligation to pay death benefits may have been made and been performable in Cuba, as the lower court found, the promise to pay the cash surrender value of the policy was "a continuous, irrevocable, offer which can only materialize into a contract by its acceptance . . . ." (R. 141, Appx. 12a.) The court reasoned that Respondent's demand through her attorney in Pennsylvania was an acceptance giving rise to a new contractual obligation created in Pennsylvania and was therefore governed by Pennsylvania law. (R. 144, Appx. 14a.) On this basis the Superior Court ordered that judgment non obstante veredicto be entered for Respondent for the dollar cash surrender value of the policy and for Petitioner on the claim for return of premiums. (R. 1, 2, 145, Appx. 4a, 5a, 16a.)

Petitioner thereupon, in accordance with Pennsylvania practice, petitioned to the Supreme Court of Pennsylvania for the allowance of an appeal from the Superior Court, again raising the federal questions review of which is here sought. (R. 647, 651.) As stated above, the petition was dismissed on March 22, 1965. (R. 641, Appx. 16a.)

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* R. 447-49; Petitioner's Brief in Support of Motion for Judgment N.O.V. or for a New Trial 10-15, 42.

REASONS FOR GRANTING THE WRIT

This is one of scores of suits brought by Cuban citizens in United States courts seeking payment in the United States, in United States dollars, of the cash surrender value of life insurance policies purchased in Cuba from United States and Canadian insurance companies. It is the first such suit in which a United States forum has applied local law in the absence of a policy provision expressly providing for payment in a particular jurisdiction of the United States.*

In reaching this result in a case where there is no significant contact between the underlying transaction and the forum state, and in which both parties are citizens of foreign nations, the Pennsylvania courts have ignored controlling decisions of this Court and have embarked upon an unwarranted and intrusive interference in an international transaction between two foreign nationals, in which neither the United States nor the Commonwealth of Pennsylvania has a legitimate interest. Unless corrected by this Court, the decision below will cast doubt upon a constitutional rule that has hitherto been regarded as settled and will

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* This case is indistinguishable on its facts from Crown Life Ins. Co. v. Calvo, 164 So. 2d 813 (Fla. 1964), *cert. denied*, 379 U.S. 915. There the Florida Supreme Court held, as Petitioner here maintains, that the contract of insurance, having significant contacts only with Cuba, was governed by Cuban law, that Petitioner's obligation by operation of that law had become one to pay pesos in Cuba and that since Petitioner was ready, willing and able in that case, as it is in this, to make payment in accordance with that law, there was no breach of contract. Similar results were reached in two companion cases, Confederation Life Ass'n v. Ugalde, 164 So. 2d 1 (Fla. 1964), *cert. denied*, 379 U.S. 915, and Sun Life Assur. Co. v. Klawans, 165 So. 2d 167 (Fla. 1964).

involve the United States in a violation of international law.

1. *The Application of Pennsylvania Law by the Courts Below, to Create Rights and Impose Obligations Where None Exist Under Cuban Law, and to Compel Petitioner to Make a Payment Which It Is Prohibited from Making by Cuban Law, Violates the Fourteenth Amendment.*

In an unbroken line of decisions this Court has recognized the rule that the Fourteenth Amendment forbids a court of the United States from applying the substantive law of the forum to a controversy with which the forum has no substantial connection, and in the resolution of which it has no legitimate interest. *Clay* v. *Sun Ins. Office, Ltd.*, 377 U.S. 179, 181-82; *Clay* v. *Sun Ins. Office, Ltd.*, 363 U.S. 207, 210-11; *Watson* v. *Employers Liab. Assur. Corp.*, 348 U.S. 66, 70-73; *Lauritzen* v. *Larsen*, 345 U.S. 571, 590-91; *Hartford Accident & Indem. Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143; *Home Ins. Co.* v. *Dick*, 281 U.S. 397; *Aetna Life Ins. Co.* v. *Dunken*, 266 U.S. 389, 399-400; *New York Life Ins. Co.* v. *Dodge*, 246 U.S. 357; *New York Life Ins. Co.* v. *Head*, 234 U.S. 149; *Allgeyer* v. *Louisiana*, 165 U.S. 578; *cf. McGee* v. *International Life Ins. Co.*, 355 U.S. 220; *International Shoe Co.* v. *Washington*, 326 U.S. 310. See also *Zimmermann* v. *Sutherland*, 274 U.S. 253, 255-56; *Deutsche Bank Filiale Nurnberg* v. *Humphrey*, 272 U.S. 517, 519.* The decision below wholly ignores this settled rule—and in a context moreover where compli-

* Considerations in favor of permitting application of procedural or purely remedial rules of the forum are of course inapplicable here. The only issues at bar are the substantive rights and obligations of the parties.

ance with the obligation imposed by application of Pennsylvania law is affirmatively forbidden by the law of the jurisdiction that has the only substantial connections with the underlying transaction. The law of Cuba, far from requiring performance of the obligation created by imposition of Pennsylvania law, forbids Petitioner under severe penalties from discharging the obligation created by the decisions below.**

The sole contacts between the forum state, Pennsylvania, and the insurance transaction upon which this suit is based, are (1) that Respondent instituted suit in Pennsylvania, having shortly prior to suit made a demand for payment through her Pennsylvania attorney and (2) that Petitioner is licensed to write insurance in Pennsylvania which is wholly unrelated to the insurance it writes in Cuba. The second of these "contacts" cannot be sufficient to permit the forum state to impose its own legal standards upon the Cuban insurance transaction at issue, since such a rule would mean that jurisdiction over the person of a defendant is sufficient to obviate the due process requirement in choice of law—a rule rejected in each of the decisions of this Court cited above. By the same token, the first of the "contacts" with Pennsylvania cannot be permitted to supply the constitutional nexus, since contacts connected simply with the institution of litigation are present in every suit. The application of Pennsylvania law on the basis of these two "contacts" with that state would simply obliterate the due process line consistently drawn in the decisions of this Court.

In *Home Ins. Co.* v. *Dick, supra,* the Texas courts applied a Texas statute which permitted suit on an in-

** As pointed out above, Cuba retains jurisdiction over Petitioner by reason of the fact that Petitioner has employees and assets located there.

surance contract for a period longer than that specified in a policy provision enforceable under the law of Mexico where the contract was made. This Court declared:

> "All acts relating to the making of the policy were done in Mexico. All in relation to the making of the contracts of re-insurance were done there or in New York. And, likewise, all things in regard to performance were to be done outside of Texas. Neither the Texas laws nor the Texas courts were invoked for any purpose, except by Dick in the bringing of this suit. The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." *Id.* at 408.

The rationalization by which the Pennsylvania courts have sought to avoid the constitutional requirement does not constitute an adequate state ground of decision. In *Aetna Life Ins. Co.* v. *Dunken, supra,* the Texas courts had sought in similar fashion to predicate the application of Texas law upon a purported finding that a "second contract" of insurance had been created in Texas. In that case the original policy had been issued to the insured in Tennessee. Later the insured became a resident of Texas where he exercised an option to convert the policy from one of term insurance into a twenty-year life policy. This Court squarely held that the application of Texas law by the Texas courts to increase the defendant's contractual obligation violated the defendant's rights under the full

faith and credit clause and the Fourteenth Amendment; the opinion states:

> "The second policy . . . was issued not as a result of any new negotiation or agreement but in discharge of preexisting obligations. It merely fulfilled promises then outstanding; and did not arise from new or additional promises. The result in legal contemplation was not a novation but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract. . . .
>
> "From these premises it necessarily results that the second policy follows the status of the first for which it was exchanged, and is controlled by Tennessee law." *Id.* at 399-400.

The constitutional question for decision is whether the minimum contact required under the due process clause is in fact present. If it is not, the constitutional rule may not be evaded by doctrinal ingenuity or confusion. And see *Home Ins. Co.* v. *Dick, supra* at 406-07; *Allgeyer* v. *Louisiana, supra* at 588-89; *cf. Indiana ex rel. Anderson* v. *Brand,* 303 U.S. 95, 100.

The decision below is particularly repugnant to the command of the Fourteenth Amendment in that it not only applies local law to alter and enlarge obligations pertaining to a transaction with which the forum has no significant contact but seeks affirmatively to compel Petitioner to violate the law of Cuba—the only jurisdiction with which the transaction has significant contacts. Even where the forum has predominant interests in the matter being litigated this Court has recognized the constitutional problem that is presented by an order requiring a party to violate foreign law. *Société Internationale* v. *Rogers,* 357 U.S. 197, 210-12.

The Pennsylvania courts have not attempted to justify the application of Pennsylvania law in terms

of the protection or furtherance of special interests or policies important to that state and no such justification can be found. Nor can the application of Pennsylvania law in this case be justified upon any special considerations of fairness to the parties, or of convenience, or of practicality. Compare *Clay* v. *Sun Ins. Office, Ltd.*, both *supra; Watson* v. *Employers Liab. Assur. Corp., supra; International Shoe Co.* v. *Washington, supra.* The decision below represents a total rejection of any constitutional limitation whatsoever upon a forum's choice of law and cannot be squared under any conceivable analysis with the constitutional rule applied in numerous decisions of this Court. See generally Currie, *The Constitution and the Choice of Law,* 26 U. Chi. L. Rev. 9 (1958); Leflar, *Constitutional Limits on Free Choice of Law,* 28 Law & Contemp. Prob. 706, 724-26 (1963).

A company such as Petitioner writing insurance in various foreign countries must maintain foreign currency reserves roughly proportional to its foreign currency obligations. The record shows that Petitioner in fact maintains peso reserves in Cuba with which to discharge its peso obligations. (R. 252, 253.) Both parties have suffered from a general depreciation of the Cuban peso and from the imposition of exchange control measures now in force in Cuba.* To permit

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* It is no answer to say that the company could lawfully have withdrawn most of its peso reserves from Cuba prior to 1959. The Respondent also could have liquidated her policy and withdrawn the proceeds prior to 1959. Petitioner, conducting an international operation, must maintain reserves in the various countries where it has obligations precisely so that it can be sure of available reserves despite national legislation restricting the movement of funds from one country to another. Both parties might have anticipated and avoided the impact of Cuban restrictions on capital movements and the depreciation of Cuban currency, but they did not.

the creditor in such a transaction to avoid altogether the effect of governing Cuban law simply by bringing suit in another country cannot be justified upon any considerations of convenience, or fairness, or practicality, particularly where under the laws of Cuba payment outside of Cuba is not only a criminal offense but is undoubtedly no discharge of the obligation. The effect of the decision of the Pennsylvania court is to hold international insurance companies such as Petitioner liable for risks not contemplated in the contract and to introduce staggering uncertainties into the overall management of such a company's affairs.

2. *The Decision of the Court Below Involves the United States in a Violation of International Law.*

Where a case "involves a foreign element such as a foreign place of making of a contract but the parties are nationals of the forum, it is a private international law case. . . . The situation differs sharply when a national of a State other than the forum is a party to a private international law case; public international law then governs the content of all the private international norms applied."* Local conflict of laws rules

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* Stevenson, *The Relationship of Private International Law to Public International Law*, 52 Col. L. Rev. 561, 576-77 (1952). *Cf.* Cases of Serbian and Brazilian Loans, P.C.I.J., Ser. A., Nos. 20/21 (1929), 2 Hudson, World Court Reports 340, 402 (1935); Illinois Central R. Co. (United States v. Mexico), United States and Mexico General Claims Comm'n under Convention of 1923 (March 31, 1926), [1926-1927] Opinions of Comm'rs 15, 20 Am. J. Int'l L. 794 (1926), 4 U.N. Rep. Int'l Arb. Awards 21 (1951); Hilton v. Guyot, 159 U.S. 113, 163; Restatement, The Foreign Relations Law of The United States, Report on Revised Sections § 194 (formerly § 199), comment a (May 18, 1965), approved by the Institute at its meeting on May 20, 1965.

must yield to public international concepts of due process no less than to federal constitutional concepts.* International law is violated when a court under the guise of applying a local conflict of laws rule undertakes to alter rights and obligations of a national of a foreign state arising out of a transaction having no substantial contact with the forum state.** When, as here, the foreign national is injured by this process, "the court commits an international delict and subjects the State to diplomatic representations or the possible award of damages or other reparation by an international tribunal."***

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* "'Due process,' substantive and procedural, has its international equivalent in that loose collection of fundamental notions of decency or natural justice, violation of which is claimed to be a 'denial of justice.'" Katzenbach, *Conflicts on an Unruly Horse: Reciprocal Claims and Tolerances in Interstate and International Law*, 65 Yale L. J. 1087, 1111 (1956). "It is not possible to state with any precision the exact extent of this limitation on the norms of private international law applied. In general it is one of reasonableness, comparable to that imposed by the Federal Constitution upon the conflict of laws rules of the states." Stevenson, *supra* at 579.

** "[A] state cannot obtain control over conduct not within its jurisdiction to prescribe by the simple device of inventing a choice of law rule to be applied in the particular case for the purpose of giving effect to a rule of its own law designed to govern conduct." Restatement, The Foreign Relations Law of the United States § 19, comment d (Prop. Off. Draft, 1962).

*** Stevenson, *supra* at 574 citing Beckett, *What is Private International Law?*, 7 Brit. Y. B. Int'l L. 73, 75 (1926).

The United States Department of State declared to the Preparatory Committee for the 1930 Hague Conference on the Codification of International Law:

> "Since national courts are not the final interpreter of international law and treaty rights, it follows that international responsibility may be based upon a failure of national courts

A Canadian national has entered into a contractual relationship in Cuba with a citizen of Cuba. The contract, written in Spanish, called for payment in a currency which at the time was legal tender in Cuba. When by operation of Cuban law the peso became the only legal tender, both parties acquiesced, recognizing that their rights and obligations were controlled by Cuban law. By no accepted international law norm may these rights and obligations be fundamentally altered by application of Pennsylvania law. To deprive a Canadian national of its defenses under the law of the only jurisdiction having any significant contact with the contract constitutes an unwarranted interference in a transaction in which the United States has no legitimate interest. The judgments of the Pennsylvania courts are manifestly unjust and constitute an unreasonable exercise of jurisdiction which, unless corrected by this Court, will properly give rise to a claim by

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properly to interpret international obligations." League of Nations Doc. No. 1929.V. 10 at 10-11.

The Third Committee of the Hague Codification Conference subsequently adopted an article on state responsibility in accord with the foregoing:

> "International responsibility is incurred by a State if damage is sustained by a foreigner as a result of the fact:
>
> (1) That a judicial decision, which is not subject to appeal, is clearly incompatible with the international obligations of the State; . . .." Hague Codification Conference of 1930, Minutes of the Third Committee, League of Nations Doc. No. 1930.V. 17 at 237.

These views of state responsibility also find support in numerous decisions of international tribunals and in writings of publicists. See 5 Hackworth, *Digest of International Law* 526 *et seq.* (1943) and cases there cited; Briggs, *The Law of Nations* 678 (1952); Brierly, *The Law of Nations* 215 (4th ed. 1953).

the Government of Canada on behalf of its national under principles of international law.

The United States Government has espoused a similar claim on behalf of a United States citizen. In *The Alsop Claim* (*United States* v. *Chile*), Submitted under Protocol of 1909, 5 Am. J. Int'l L. 1079 (1911), the United States contended that the application of Chilean law by a Chilean court, in a suit brought by a United States citizen asserting rights under an allegedly Bolivian contract, wrongfully deprived the United States citizen of contractual interests possessed under controlling Bolivian law, "for which action the Government of Chile is liable to respond in damages under . . . well-known and universally recognized principles of international law . . .." U.S. Dep't of State, The Alsop Claim—The Case of the United States 211 (G.P.O. 1910).* The principle clearly applies here where the rights of the Respondent and Petitioner were established under Cuban law before Respondent left Cuba and made demand in Pennsylvania.

In the *Case of the S.S. "Lotus"* (*France* v. *Turkey*), P.C.I.J., Ser. A., No. 10 (1927), 2 Hudson, World Court Reports 20 (1935), the tribunal upheld the application of Turkish law to a maritime incident occur-

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* The claimant's contract related to mining properties in Bolivian territory when the contract was made which was later occupied by Chile by conquest before the claimant had reduced the properties to possession. The tribunal found that it was "clear from the facts that whatever might have been the theoretic strength of [the claimant's] position under Bolivian law, he had not in fact been able under that law and administration to obtain possession of the mines . . . ." 5 Am. J. Int'l L. at 1097. In denying the claim the tribunal in no way questioned the principle that interference with established foreign contractual rights creates a liability to respond in damages under international law.

ring outside Turkish waters; but the tribunal again clearly acknowledged the strength of the contention of the Government of France that without significant contacts between Turkey and the incident in question the action of the Turkish court would have raised serious questions under international law. See 2 Hudson, World Court Reports at 35.

In *Lauritzen* v. *Larsen, supra,* a limited construction was given by this Court to the jurisdictional scope of the Jones Act primarily because a broader construction would not have been in conformity with principles of international law recognized by the Court.* The case involved negligent injury to a Danish seaman on board a Danish ship in Havana harbor. The employment contract was made in New York, the seaman was returned to New York at the completion of the agreed period of service, and the ship itself frequently and regularly stopped at United States ports. *Id.* at 582-83. Contacts with the United States were therefore perhaps sufficient to have satisfied the analogous requirements of the Fourteenth Amendment discussed above and referred to in the Court's opinion. *Id.* at 590-91. The Court, after noting that contacts with Denmark were clearly predominant, observed

> "in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a

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* The Act itself, as this Court pointed out, is in terms exceedingly broad. It provides simply that "any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action. . . ." 41 Stat. 1007, 46 U.S.C. § 688.

> warrant for a foreign country to apply its law to an American transaction." *Id.* at 582.

Our statutes, the Court declared, should be "construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law." *Id.* at 577.

Lauritzen was followed in *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, where the Court declared:

> "The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this Court is adjudicating issues inevitably entangled in the conduct of our international relations. We need not repeat the exposition of the problem which we gave in *Lauritzen* v. *Larsen.* Due regard for the relevant factors we there enumerated, and the weight we indicated to be given to each, preclude application of American law to the claims here asserted." *Id.* at 383.

In *Romero,* on similar facts except that the injury occurred in New York harbor, separate claims against the foreign corporate defendant both under the Jones Act and under general maritime law were ordered dismissed in deference to controlling Spanish law.* *Accord, McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10. See also *Deutsche Bank Filiale Nurnberg* v. *Humphrey, supra; Zimmermann* v. *Sutherland, supra.*

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* Identical claims against United States corporations were remanded for further proceedings. *Id.* at 385.

Similarly the New York Court of Appeals acknowledged an obligation under international law to give effect, after recognition of the Soviet Union, to Soviet laws discharging the liability of American insurance companies under contracts written in Russia. *Dougherty* v. *Equitable Life Assur. Soc'y and 25 Other Cases,* 266 N.Y. 71, 193 N.E. 897 (1934). Here more than respect for Cuban law is involved. Important rights of Canada on behalf of its nationals are to be safeguarded against the enlargement of obligations under contracts entered into outside of the United States with non-resident foreigners.

The fact that a state court rather than a federal court has sought to impose its law to control the transaction at bar is no defense to the United States under international law. See, *e.g.,* 5 Hackworth, *Digest of International Law* 595 (1943); Restatement, The Foreign Relations Law of the United States § 174 (Prop. Off. Draft, 1962). The issue of whether the Pennsylvania court's judgment involves the United States in a violation of international law is therefore one of direct and paramount federal concern.

That questions involving "ordering our relations with other members of the international community . . .," including acts which might involve the United States in a violation of international law, are substantial federal questions was settled in *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398, 425. The Court expressly approved the view of Professor Philip C. Jessup, now a member of the International Court of Justice, "that rules of international law should not be left to divergent and perhaps parochial state interpretations." *Ibid.* Such matters, the Court said, "must be treated exclusively as an aspect of federal law." *Ibid.*

The Court of course went further, holding that while it should exercise restraint in questioning whether the act of a foreign state complied with international law it should reverse decisions of courts of the United States which might offend a foreign nation, even though not involving the United States in a violation of international law. This being so, wherever there is a reasonable showing that a decision below could involve the United States in a violation of international law, it is not only a right of this Court, but a duty recognized by this Court, to review that decision.

CONCLUSION

For the foregoing reasons Petitioner prays that this petition for certiorari be granted.

Respectfully submitted,

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